



1 STEVEN JOHN SCHMITZ, an individual, and S.J. BURKHARDT, INC.  
2 EMPLOYEES' PROFIT SHARING PLAN, an employee benefit plan.

3 A. The Secretary, SHANNON LESLIE STUART ("Stuart") and the S.J.  
4 BURKHARDT, INC. EMPLOYEES' PROFIT SHARING PLAN ("Plan") (collectively,  
5 "the parties") admit that the Court has jurisdiction over this action pursuant to ERISA  
6 § 502(e)(1), 29 U.S.C. § 1132(e)(1), and that venue lies in the Central District of Cali-  
7 fornia pursuant to ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2).

8 B. The parties agree to the entry of this Consent Judgment & Order. The par-  
9 ties further agree that this Consent Judgment & Order shall fully settle all claims of the  
10 Secretary asserted in the Complaint against Stuart filed in this matter.

11 C. Defendant Stuart neither admits nor denies the allegations made in the Sec-  
12 retary's Complaint filed in this matter.

13 It is ORDERED, ADJUDGED AND DECREED that:  
14

15 A. Defendant Stuart is permanently enjoined from violating the provisions of  
16 Title I of ERISA.

17 B. Except as provided in Subparagraphs i. and ii. of this Paragraph, Defendant  
18 Stuart is hereby permanently enjoined from serving as a fiduciary or service  
19 provider to any ERISA-covered plan.

20 i. With regard to the Plan, Defendant Stuart shall be removed as  
21 Plan fiduciary and service provider at the time an Independent Fi-  
22 duciary is appointed by this Court as provided below.

23 ii. With regard to the ERISA-covered SJB 401(k) Plan (which is  
24 named in an entirely separate action brought by the Secretary in  
25 this Court, Case No. CV-11-06443 JAK (DTBx)), Defendant Stu-  
26 art agrees to stipulate to any motion, or not to contest any action  
27 ("Stipulated Motion"), brought by the Secretary to the extent that  
28 the motion or action seeks his removal as a fiduciary or service

1 provider to the SJB 401(k) Plan and requests the appointment of  
2 an Independent Fiduciary selected by the Secretary. The Secre-  
3 tary reserves the right to seek reimbursement for the costs of the  
4 Independent Fiduciary on behalf of the SJB 401(k) Plan; however,  
5 the Secretary will not request such relief in the Stipulated Motion  
6 or action described in this Subparagraph.

7 C. Defendant Stuart is enjoined from causing any assets to be removed from  
8 any account holding assets of the Plan. Within seven days of entry, the Sec-  
9 retary shall serve a copy of this Consent Judgment & Order on the custo-  
10 dian of the assets of the Plan and such custodian shall refrain from distribut-  
11 ing Plan assets until receiving further instructions from an Independent Fi-  
12 duciary appointed by this Court.

13 D. Defendant Stuart is a participant in the Plan. The Plan is hereby amended  
14 to provide for the following: "An offset to a participant's accrued benefit,  
15 or an offset to a participant's individual account, against an amount that the  
16 participant is ordered or required to pay the Plan with respect to a judgment,  
17 order, or decree issued, or a settlement entered into, shall be permitted."  
18 This Consent Judgment & Order shall be attached to the Plan document as  
19 an amendment. Defendant Stuart agrees to offset his account balance to  
20 pay the expenses and costs associated with the Independent Fiduciary  
21 against his accrued benefit in the Plan. At the time the Independent Fiduci-  
22 ary is appointed, he or she shall set off the individual account balance of  
23 Defendant Stuart, if any, in the amount of \$35,000 to cover the reasonable  
24 fees and expenses of the Independent Fiduciary, as authorized by 29 U.S.C.  
25 § 1056(d)(4). If the reasonable fees and expenses of the Independent Fidu-  
26 ciary exceeds \$35,000, the Plan shall pay the remainder. If the reasonable  
27 fees of the Independent Fiduciary are less than \$35,000, the remainder shall  
28 be distributed to the Plan participants, except not Stuart, on a pro rata basis.

- 1 E. The Plan is hereby amended to allow Stuart to take an early distribution of  
2 up to \$20,000 from his accrued benefit. The Independent Fiduciary shall  
3 approve such distribution upon Stuart's submission of a claim for benefits.  
4 All other distributions shall take place as determined by the Independent  
5 Fiduciary.
- 6 F. An Independent Fiduciary shall be appointed by this Court to manage and  
7 administer the Plan in accordance with ERISA for the benefit of the Plan's  
8 participants and beneficiaries. The Secretary shall have thirty days after the  
9 entry of this Consent Judgment & Order to submit a motion to this Court  
10 seeking such appointment. The Plan may pay the reasonable fees and ex-  
11 penses of the Independent Fiduciary as set forth by Order of this Court.
- 12 G. Once appointed, the Independent Fiduciary shall have sole responsibility for  
13 administering the Plan and shall have the following powers, duties and re-  
14 sponsibilities:
- 15 1. The Independent Fiduciary shall have full fiduciary authority and  
16 shall have all the powers, rights, discretion, and duties of a trustee, fiduci-  
17 ary, and Plan Administrator under ERISA;
  - 18 2. The Independent Fiduciary's responsibilities shall include, but shall  
19 not be limited to, establishment or continuation of trust accounts for the  
20 benefit of the Plan's participants and beneficiaries, communication with  
21 participants regarding their account disbursement options, collection of any  
22 necessary information from those persons or entities in custody of such in-  
23 formation including bankruptcy trustees, and calculation of the participants'  
24 and beneficiaries' account balances;
  - 25 3. The Independent Fiduciary shall have responsibility and authority to  
26 collect, liquidate, and manage the Plan's assets for the benefit of the eligible  
27 participants and beneficiaries who are entitled to receive such assets, until  
28

1 such time that the Plan's assets are distributed to those participants and  
2 beneficiaries;

3 4. The Independent Fiduciary shall exercise reasonable care and dili-  
4 gence to identify and locate each participant or beneficiary who is eligible  
5 to receive a distribution under the terms of the Plan. Further, the Independ-  
6 ent Fiduciary shall make distributions to each eligible participant and bene-  
7 ficiary of the Plan, except as provided in Paragraph F above;

8 5. The Independent Fiduciary shall have full access to all data, informa-  
9 tion and calculations in the Plan's possession or under its control, including  
10 information and records maintained by the Plan's custodial trustee, service  
11 providers, and Defendant Stuart;

12 6. Defendant Stuart shall fully cooperate with all reasonable requests by  
13 the Independent Fiduciary to facilitate the administration, liquidation and/or  
14 termination of the Plan;

15 7. As soon as administratively practicable after appointment, the Inde-  
16 pendent Fiduciary shall provide for the orderly termination and liquidation  
17 of the Plan, including making all distributions and/or rollovers to the par-  
18 ticipants and beneficiaries;

19 8. The Independent Fiduciary shall have full authority to amend the  
20 Plan as necessary to effectuate its termination and the processing of all par-  
21 ticipant distributions; and

22 9. The Independent Fiduciary shall provide to the Secretary any and all  
23 information she requests concerning the Plan, including but not limited to  
24 information concerning the assets remaining in the plan and the status of  
25 distributions.

26 **H.** Following the entry of this Consent Order & Judgment, the Secretary shall  
27 assess a civil penalty against Defendant Stuart in an amount equal to twenty  
28 percent of the applicable recovery amount pursuant to ERISA § 502(l), 29

1 U.S.C. § 1132(l). Defendant Stuart reserves all rights to contest the assess-  
2 ment and calculation of any civil penalty assessed under ERISA § 502(l),  
3 29 U.S.C. § 1132(l), and to petition the Secretary for a waiver or reduction  
4 of such civil penalty. This Court shall retain jurisdiction for purposes of en-  
5 forcing compliance with the terms of this Order.

6 I. Defendant Stuart expressly waives any and all claims of any nature which  
7 they have or may have against the Secretary, the Department of Labor, or  
8 any of its officers, agents, attorneys, employees or representatives, arising  
9 out of or in connection with the allegations contained in the Complaint on  
10 file in this action, any other proceedings or investigation incident thereto or  
11 based on the Equal Access to Justice Act, as amended.

12 J. The parties shall each bear their own costs, expenses, and attorneys' fees  
13 incurred to date in connection with any stage of this proceeding, including  
14 but not limited to attorneys' fees which may be available under the Equal  
15 Access to Justice Act, as amended.

16 K. Defendant Stuart represents that there is no person who claims or who may  
17 claim through Defendant Stuart, any interest in any amounts restored to the  
18 Plan under this Consent Judgment and Order, and therefore, no spousal  
19 waiver is necessary.

20 L. Nothing in this Consent Judgment & Order is binding on any governmental  
21 agency other than the United States Department of Labor, Employee Bene-  
22 fits Security Administration.

23 M. This Court retains jurisdiction of this action for purposes of enforcing com-  
24 pliance with the terms of this Consent Judgment & Order.

25 N. By signing their names to this Consent Judgment & Order, the parties rep-  
26 resent that they are informed and understand the effect and purpose of this  
27 Consent Judgment & Order.  
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1 The Court directs the entry of this Consent Judgment & Order as a final order.

2  
3 IT IS SO ORDERED.

4 1/25/12

5 Dated: \_\_\_\_\_



United States District Judge

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7  
8 Entry of this Consent Judgment & Order is hereby consented to:

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10  
11 Dated: Jan. 20, 2012

M. PATRICIA SMITH  
Solicitor of Labor

MARY K. ALEJANDRO  
Acting Regional Solicitor

DANIELLE L. JABERG  
Counsel for ERISA

17  
18 By: /s/ Ian H. Eliasoph  
19 IAN H. ELIASOPH  
20 Counsel for Civil Rights

21 Attorneys for HILDA L. SOLIS,  
22 Secretary of Labor,  
23 United States Department of Labor

24 Dated: Jan. 20, 2012

/s/ S. L. Stuart  
25 SHANNON LESLIE STUART  
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